Lorimar Productions, Inc. *and* **Jim W. Dotson.** Case 31-CA-11538

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND ZIMMERMAN

On 3 March 1983 Administrative Law Judge William J. Pannier III issued the attached Decision in this proceeding. Thereafter, the Charging Party filed exceptions and a supporting brief, and the Respondent filed an answering brief in opposition to the Charging Party's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[1] The Charging Party has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge: This matter was heard by me in Los Angeles, California, on November 16 through 18, 1982. On November 25, 1981,[1] the Acting Regional Director for Region 31 of the National Labor Relations Board, herein called the Board, issued a complaint and notice of hearing, based on an unfair labor practices charge filed on September 23 and amended on November 4, alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, herein called the Act. All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based on the entire record, upon the briefs filed on behalf of the parties, and upon my observation of the demeanor of the witnesses, I make the following:

[1] Unless otherwise stated, all dates occurred in 1981.

FINDINGS OF FACT

I. JURISDICTION

At all times material, Lorimar Productions, Inc., herein called Respondent, has been a California corporation, with an office and principal place of business located in Los Angeles, California, where it is engaged in the production of motion pictures and television programs. In the course and conduct of those business operations, Respondent annually sells goods or services valued in excess of $50,000 to customers or business enterprises within the State of California, each of which, in turn, meet one of the Board's jurisdictional standards other than the indirect inflow or indirect outflow jurisdictional standard. Therefore, I conclude that at all times material, Respondent has been an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all times material, Local 399, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

As set forth above, Respondent is engaged in the production of motion pictures and of television programs. In connection with that business, Respondent operates a transportation department which, essentially, provides courier service for Respondent and moves equipment and materials in connection with Respondent's operations. Employees in the transportation department are classified as drivers, servicemen, dispatchers, mechanics, and secretaries. Save for the latter, at all times material, the Union has represented the transportation department employees. Since approximately August 1978, Jon Burke has served as Respondent's transportation manager.[2]

The principal allegation in the complaint is that since March 23, except for limited occasions, Respondent has refused to assign three drivers—Jim W. Dotson, Richard Edward Wagner, Jr., and Donald G. Burke—to "on production" work. Work performed by transportation department drivers falls into two general categories: on production and off production. With respect to the former, when a television series such as "Dallas" is being filmed, drivers are assigned to specific vehicles used for that production and continue driving those particular vehicles for the duration of filming for that season. Thus, daily work schedules for those drivers are determined by filming schedules for that particular productions to

[2] Respondent admits that at all times material, Burke has been a supervisor within the meaning of Sec. 2(11) of the Act and, as general proposition subject to qualification in certain specific situations, has been an agent of Respondent with respect to labor relations matters.

which the drivers assigned, as opposed to being determined by Respondent's transportation department. As must be evident, drivers working off production are ones who are not assigned to particular productions, but are assigned on a daily or short-term basis, by Respondent, to perform such duties as courier work, delivery of construction materials and crews to specific locations, or delivery to and return of props from locations where filming is taking place.

So far as the collective-bargaining agreement is material in this proceeding, no distinction is made between on- and off-production work. That is, employees performing both categories of work are entitled to the same wages and benefits. Moreover, so long as drivers who have acquired seniority with Respondent by having worked for it for a prescribed number of days, referred to as lot seniority, are assigned 8 hours' work each day, there is no contractual priority between assignments to on-production and off-production duties.

In practice, however, work in each of the two categories has certain advantages and disadvantages. For example, inasmuch as drivers working on production must observe filming schedules of shows to which they are assigned, their daily work schedules tend to be more irregular, requiring earlier start and later finish times. On the other hand, as Donald Burke explained, because of the manner in which productions are filmed, once a driver arrives at the set each day, "there's not that much work involved." By contrast, off-production work, while governed by more regular work schedules, requires more constant driving during the course of each workday. Furthermore, on-production drivers tend to receive more frequent opportunities for doubletime premium rates, known as golden time, and for meal expense reimbursement, known as meal penalty, than do drivers working off production. The result of these differences has been that some of Respondent's drivers prefer to be assigned only to off-production work whereas others prefer on-production assignments, depending on the emphasis accorded by each driver to the various advantages and disadvantages of each category of work.

B. *The Accounts of the Alleged Discriminatees*

Each of the alleged discriminatees, when testifying, recited a sequence of events that, if credited, tends to support the allegations of discrimination in the complaint. Thus, Dotson testified that after having begun work for Respondent in approximately September 1979 he had been assigned to on-production work regularly until mid-1980 when, as a result of an argument with driver-captain Sammy Carter[3] during the filming of the movie "S.O.B.," he had been removed from that production and thereafter had received "very, very, very little" on-production assignments. According to Dotson, the dispute with Carter had arisen because at the end of one workday, Dotson had attempted to service the motor home that he had been driving pursuant to instructions on "a sign in our little dog-house area that we stayed in, by Mr. Jon Burke himself, that you had to service your motor home at the end of each shift."[4] Observing this, Carter had instructed Dotson to cease performing that work inasmuch as the time spent doing it could result in Respondent having to pay Dotson a premimum rate, known as forced time, for not having allowed a full 8 hours to elapse between completion of one shift and commencement of the next one. As described by Dotson, "Sammy and I got into an argument . . . which apparently I was wrong, because I got fired [from "S.O.B."] for it."

Dotson testified that approximately 2 weeks later, Jon Burke had said that he was angry with Dotson for having argued with Carter inasmuch as the latter "was the boss, and that [Dotson] was to do what he said." At or about the same time, testified Dotson, he had telephoned the Union and had spoken with "business agent of [sic] Wayne Campbell." According to Dotson, he had asked Campbell "to look into the matter of what had happened, because of the sign, and why I was being punished," and that later "Mr. Campbell came by and saw me to explain what had happened with our conversation," saying that nothing could be done inasmuch as the seniority clause in the collective-bargaining agreement meant no more than "a guarantee of eight hours," without imposing further requirements on Respondent's discretion in selecting drivers for assignments.

Dotson testified that, following his removal from "S.O.B.," he had worked principally off production until late 1980 when he had been assigned to the production "Knots Landing," on which he worked until the following March. According to Doston, his assignment to that production had culminated after he had requested that he be taken off of it: "We . . . the coordinator and the captain were continuously arguing and fighting between themselves, and bring the drivers into it. And it just got to the point that you would get nervous and it—so, for safety reasons, I went into Jon Burke and requested to be taken off [it]." While Dotson's request had been honored, thereafter he had been assigned primarily to off-production work.

In May Dotson complained to Campbell about not being assigned to on-production work: "I wanted him to check in on rights a seniority man had, again." In addition, during that same month, Dotson claimed that he had complained to Campbell that drivers were not being given their meal penalty and were being compelled, in effect, to waive their forced time premium pay. According to Dotson, Campbell had said that he would check into these complaints. Dotson also authored a three-page letter, dated May 28, copies of which were furnished to both the Union and Respondent, in which he complained of "prejudicial action" by Respondent in that, notwithstanding his seniority, he had "been denied any opportunity by [Respondent] to work as a captain or co-captain, in favor of people with such less experience and seniori-

[3] Driver-captains coordinate the work of drivers while on production sites. On some productions, they are assisted in performing that work by drivers who have been designated as driver co-captains.

[4] The transportation department is located on the M.G.M. lot in Culver City, California, where there are two adjoining trailers, each approximately 55 feet long and 10 feet wide, with the first one being shared by the mechanics' office and the drivers' lounge, referred to as the "dog-house."

ty," had been denied on production work, and had been told by Jon Burke that he would "never work another show and if you're not happy—why don't you quit."

After Campbell had retired as business agent, Dotson pursued his complaint, about not receiving on production assignments, with Business Agent Leo Reed. According to Dotson, approximately a month after he had sent his letter, Reed had reported that Jon Burke had said, "—this is a quote—that I'm [Dotson] a good worker, a good driver, and the next show that goes out, I will be on it. Unquote." But, testified Dotson, when he had repeated this message to mechanic Pete Turner, he later had been reprimanded by Jon Burke for having attributed to the latter a promise that he had not made. According to Dotson, "I called Leo Reed immediately after that, and told him what had happened."

Dotson testified that, during the summer, he had reported to Business Agent Jerry Knight that Jon Burke had been performing unit work illegally. According to Dotson, Knight had "apparently talked to Jon. And, as I understand, Jon Burke paid one of the employees, which I believe to be Robert Rambo, the day's pay for him being a planner." Finally, on one day in July, Dotson had not received a call and, apparently discovering that work had been available, had gone to the Union to file a grievance. However, while he had been at the Union's hall, a telephone conversation had ensued between Jon Burke and a representative of the Union. Dotson explained that "either Jon Burke called, or the union called to verify, and I was told by [Respondent] to came [sic] on in, and I could work that day. Which I did." Nevertheless Dotson continued to be assigned off-production work until he took a disability retirement in late September.

Wagner had become employed by Respondent in 1977 and during that same year first had been assigned to on-production work. Thereafter, he testified, he had been assigned continuously to it "all the time, practically" until mid-1980. Wagner testified that his receipt of less than normal on-production work had been preceded that summer by an incident where, having spent the day assigned to a motor home on a television production, he had returned to the office where the dispatcher had asked him to deliver a script to another location. The time spent doing so had caused Wagner to be so late finishing work that day he had been entitled, under the terms of the collective-bargaining agreement, to a meal penalty payment for his evening meal. He submitted his claim for it and, on the following day, testified Wagner, he had been questioned by Jon Burke concerning the reason for the claimed meal penalty. According to Wagner, Jon Burke had said that Respondent did "not like you to apply for a meal penalty when you worked out of the office," had complained about a can of pop that had exploded in the refrigerator of the motor home that Wagner had been driving,[5] and had "said also that [Wagner] will not put in for meal penalty again working out of that office."

In October or November 1980, Wagner had been one member of a crew of Respondent's drivers assigned to vehicles being used in the production "S.O.B." When Respondent's crew had arrived for work at the location, they discovered that another crew of drivers, retained directly by the producer's agent, was present and assigned to the vehicles that Respondent's drivers were to operate. Wagner testified that he had spoken to Sammy Carter, who was in charge of Respondent's drivers, asking what could be done and that Carter had replied that Respondent's crew should "just stand around," because "There's nothing we can do." In addition, Respondent's crew discovered that some of the duplicate drivers were not members of the Union. "So naturally, we called the union," testified Wagner, but "[f]or four days we waited, and not one representative showed up." According to Wagner, for the remainder of the day he had been assigned to ferry personnel in a minibus up and down the hill between the beach and the producer's home. In the process, he "accidently backed over a sprinkler head" at the latter and the producer had "made a big issue out of the water faucet being busted."[6]

Wagner testified that, on the following day, he had returned to the location, but had not been assigned any work to perform and, ultimately, had gone into the minibus where he had gone to sleep.[7] On the third day, testified Wagner, he had been given the day off with pay. He testified that, on the next day, he had been told by Carter that he was off the show "because [Wagner] was sleeping on the job." Thereafter, claimed Wagner, he had received "[v]ery little, if any" on-production assignments.

Wagner testified that, at some point in June, he and Donald Burke had asked Jon Burke why the two of them were not being given on-production assignments and that Jon Burke had replied by, in turn, asking, "why are you always going to the union on everything?" According to Wagner, when Donald Burke had replied, "because we can't come to you, because you're management," Jon Burke had "said we were supposed to come to him and not make waves." That remark had concluded the conversation, testified Wagner.

Donald Burke had commenced working for Respondent in late 1977 or early 1978. At some point, he had begun working on production and had continued receiving the same amount of on-production assignments as had other drivers until the spring of 1979. At that point, he testified, he had ceased receiving as much on-production work as other drivers, a state of affairs that was to continue without change, so far as the record discloses, until the hearing in this matter.

According to Donald Burke, one day during the spring of 1979, he had observed a number of people, all of whom he had believed to be secretaries, loading their automobiles with office equipment and other materials to be taken from Burbank to Culver City, the latter being the city to which Respondent had been in the process of relocating its office at the time. Burke approached one of the women and "told her that she was not allowed to

[5] Wagner testified that the can of pop had not been his, but had belonged to one of the actors working on the production.

[6] The damage caused did not impress Wagner for he testified that "it was replaced. It was no biggie."

[7] By way of explanation for this conduct, Wagner testified that "I don't know a driver that doesn't sleep in this business."

drive the car"—that "she could load it all she wanted to, but if she moved it, she would be in violation. And that it was the driver's job. And so I would call the union if she drove the car away." As it turned out, the woman to whom Burke had been speaking was not a secretary, but rather was Mary van Houton, Respondent's head of estimating and, thus, one of its chief executives. Burke testified that he then had spoken to shop steward Ronnie Brown about what had been taking place that day and that Brown had been "waiting on them when they got there [apparently Culver City] to file a grievance."

Later, testified Donald Burke, Jon Burke had "asked me, did I have words with Mary van Houton? And I said, no sir, I did not. I told her that she was in violation if she moved her car. That she could load it all she wanted to. But if she drove it, she'd be in violation." According to Donald Burke, Jon Burke then had "told me if I had any kind of problem, I was supposed to come to him with it. And I told him at that time, that he was management, and that he couldn't have done anything about it. And so I went to the union, and filed."

As had Wagner, Donald Burke testified that approximately 2 years later, in June, he and Wagner had asked Jon Burke why they had not been receiving more on-production work and, according to Donald Burke, Jon Burke had retorted, "what the hell are you going to the union for on everything. You know, you're supposed to come to me with a problem." When, testified Donald Burke, he had replied that "we couldn't come to him with our problem, because he's management," Jon Burke had "told us that, whenever we have a problem, we're supposed to come to him, and not go to the union and make waves." Donald Burke testified that he and Wagner then had filed a grievance concerning the lack of on-production work, but that later the business agent had said that, he had spoken with Jon Burke about the matter, the two drivers only were entitled to work an 8-hour day.[8]

In July, Donald Burke filed a grievance regarding a lower seniority driver having worked at a time when no work had been assigned to a driver having more seniority. By letter dated July 27, Business Agent Reed had notified Jon Burke both that Donald Burke had filed the grievance and that the Union was seeking "[f]our hours at double time in compensation to the grievant."

Respondent agrees that it had reduced the amount of on-production assignments made to Dotson, Wagner, and Donald Burke, but Jon Burke denied expressly that these reductions had been the result of union activity or of complaints to the Union by the three drivers. Rather, testified Jon Burke, Dotson had been kept off on-production work after "S.O.B." because he had asked to be removed from that production and, afterward, Jon Burke had received adverse reports about Dotson's performance while having worked on that production.

Jon Burke testified that Wagner had been relieved of on-production assignments in 1980 because on too many occasions, after having accepted assignments for the following day, he had called early on the mornings that the assigned work was to be performed and had said that he would be unable to report for work as scheduled, thereby obliging Respondent to make too frequent searches for replacement drivers and too many readjustments of schedules prepared during the preceding afternoons and evenings. Jon Burke further testified that, since 1980, Wagner had continued to do this too often with the result that Respondent had confined him to off-production assignments where it was somewhat easier to replace him when he reported that he would not be coming to work that day.

Finally, Jon Burke testified that Donald Burke had been relieved of on-production assignments, for the most part, because there had been complaints by driver-captions and other supervisors at sites on which Donald Burke had worked to the effect that the latter was individual with whom it was difficult to work. According to Jon Burke, "I decided that the only way that he could, you know, really be of any kind of benefit to the company whatsoever was being assigned to work out of the office where he was under constant supervision."

C. *The Remarks Attributed to Jon Burke*

Obviously the substantive reasons advanced by Jon Burke for the reductions of on-production assignments to the alleged discriminatees are not ones that are unlawful under the Act. However, the General Counsel argues, in essence, that they are no more than pretexts advanced to conceal Respondent's true purpose for having precluded Dotson, Wagner, and Donald Burke from receiving on-production assignments to the same degree as its other drivers: retaliation against the three drivers for having complained to the Union. To support that argument, the General Counsel points to certain comments attributed to Jon Burke which, if uttered, would amount to outright confessions of unlawful motivation, eliminating all need to consider the intrinsic merits of Respondent's defenses. See, e.g., *Advanced Installations*, 257 NLRB 845, 848–849 (1981), enfd. by memo 112 LRRM 2167 (1982), and cases cited therein.

One such conversation is the above-described one that assertedly had occurred in mid-June when, in response to Donald Burke's inquiry as to why he and Wagner were not being assigned more on-production work, Jon Burke had interrogated them concerning their reasons for having gone to the Union "on everything" and had directed them to bring their problems to him, rather than "make waves" by going to the Union. Dotson also described conversations in which Jon Burke purportedly had connected complaints to the Union with lack of on-production assignments. Thus, during direct examination, he described an August conversation that he assertedly had initiated by asking why he had not been assigned on-production work and in response to which, he claimed, Jon Burke had said, "You'll never work on another show," adding "[t]hat it was always union problems on the show, wherever [Dotson] was at." During "a heated conversation" that followed, testified Dotson, he had said that he had gone to the Union "only because [Respondent] wouldn't honor the contract. And then [Jon Burke] told me, well, if you're not happy, why don't you quit and leave." During cross-examination, Dotson added

[8] Donald Burke testified that prior to June, he had spoken to union representatives about this problem "[o]n a number of occasions."

a July conversation to his recitation of conversations with Jon Burke. According to Dotson, during that conversation, Jon Burke had stated that Dotson would "never work on another show" because Burke "wasn't going to move the company around to suit [Dotson's] benefit . . . ."

Dotson, Wagner, and Donald Burke each described a conversation between Jon Burke and the three of them on September 14. The drivers testified that they had gone to Jon Burke's office and that Dotson, acting as spokesperson, had inquired why they had not been receiving on-production assignments. According to each of the three drivers, Jon Burke had replied, in an angry tone, that they would never receive on-production work again because they were union "activists" or "antagonizers." The three drivers testified that they then had left Jon Burke's office without further discussion.

On final conversation is worthy of note. Driver Bonnie Seltzer testified that she had been serving as a dispatcher for Respondent from approximately December 1978 through February 1980, a period that had encompassed Donald Burke's encounter with van Houton in the spring of 1979. A few days after that incident, testified Seltzer, she had overheard Jon Burke instructing the planner, who prepares daily work schedules, "that because Don Burke had filed this grievance, Don was to stay out of the office from now on on an off-production."

IV. ANALYSIS

Jon Burke denied specifically having made each of the foregoing statements connecting Dotson, Wagner, and Donald Burke's assignments to their complaints to the Union. Because, as noted above, these statements, if made, would serve as admissions of Respondent's unlawful motivation with regard to those assignments, virtually eliminating the need for further analysis of Respondent's reasons for not having made on-production assignments to the three drivers, the threshold consideration to be addressed is the reliability of the testimony attributing those remarks to Jon Burke. Based on my impressions of them when they testified and after having reviewed the record of their testimonies, which serves to confirm those impressions, I conclude that Dotson, Wagner, Donald Burke, and Seltzer were not credible witnesses. Rather, I conclude that the four of them testified in a manner designed to construct a case against Respondent, rather than in a truthful manner, in an ultimate effort to secure more assignments to on-production work which the three alleged discriminatees viewed as being preferrable to off-production assignments.

The conclusion that their descriptions of the purported antiunion remarks of Jon Burke were fabricated was all but admitted by Wagner during the course of comments that he concededly had made prior to the hearing in this matter. For, he admitted not only that he "might have said" that he would "lie about" the charge before the Board, but that he "might have said" also that the only way that he could get a charge before the Board was to make up a conversation in which Jon Burke had accused Dotson, Donald Burke, and Wagner of being agitators—a remark that the three alleged discriminatees later were to testify had been made by Jon Burke on September 14. Wagner claimed that he might have made such statements "in anger." Based on that qualification, the General Counsel argues that "anger *is* inherently irrational. It *can* lead people to make factual statements which are inaccurate." Yet, as every cross-examiner can attest, anger more likely can make people drop their guard and concede candidly what they otherwise would be likely to conceal.[9]

In point of fact, it strains credulity to believe that someone would say that he intended to make up a conversation if it actually had occurred. Certainly, Wagner advanced no explanation as to why he would have gone around telling people he intended to make up remarks that Wagner, as well as Dotson and Donald Burke, now claims that Jon Burke actually had made. The more probable explanation for Wagner's remarks, about making up a story as to what Jon Burke had said, was not that he had been acting irrationally in anger, but rather that, in the course of describing how he intended to use the Board as a lever for compelling Jon Burke to assign more on production work to him, Wagner admitted exactly his design when testifying.

Indeed, that there was considerable portrayal of fiction as fact in this proceeding by the alleged discriminatees was illustrated by inconsistencies between their accounts and objective considerations. For example, as set forth above, Dotson claimed that, about 2 weeks after his removal from "S.O.B. in mid-1980, he had complained about the lack of on-production assignments that he was receiving to "business agent of [sic] Wayne Campbell." The problem with this account is that Campbell testified that he had not become business agent until approximately January 1981—approximately 6 months after Dotson purportedly had lodged a complaint with Campbell as the busienss agent. Moreover, while Dotson claimed that, in August, he had been accused by Jon Burke of having created "union problems on the show, wherever I was at," there is no evidence whatsoever that Dotson ever had complained to the Union about work-related problems or Respondent's actions while actually having worked on production. To the contrary, the complaints that he described having made to the Union all had been ones made during periods when he had not been working on production regularly and most of them had pertained to that fact. Thus, had Jon Burke truly been concerned about Dotson's complaints to the Union, keeping the latter off production hardly would have served to reduce the number of them.

A quite significant inconsistency between the drivers' descriptions of events and objective considerations—one that stands out prominently—arising from the fact that, were they to be believed, the drivers' questions to Jon Burke, concerning why they were not being given on-production assignments, had been met by responses indi-

[9] That remarks uttered in anger more likely truly reflect otherwise hidden intentions, rather than being merely irrationale and idle prattling as the General Counsel argues has long been recognized. Thus, for example, in "Medea," Euripides attributes to Creon the observation that a "cunning woman, and man likewise, is easier to guard against when quick-tempered than when taciturn."

cating that it was resulting from their complaints to the Union. Yet, while each of them had complained to the Union during the summer, there is no evidence that any one of them even had mentioned Jon Burke's purported responses to any official of the Union. Thus, Wagner and Donald Burke testified that when they had asked in June why they were not being assigned on production work, Jon Burke had asked why they were "always going to the union on everything" and had directed them to come to him and not "make waves" by going to the Union. Similarly, Dotson claimed that, in August, he had been told expressly that he was being kept off on production assignments because there were "always union problems" on the shows worked by Dotson. Nevertheless, while Reed testified that he had discussed the three drivers' complaints about their assignments with them and, more particularly, had searched to ascertain if there were any laws applicable to their situation, Reed denied having been told of Jon Burke's purported comments connecting the alleged discriminatees' denial of on-production work with their complaints to the Union. Certainly, there was no reason for them to have concealed Jon Burke's responses, if made, from Reed. In short, their failure to mention the supposed remarks of Jon Burke to Reed, during the course of complaining about their assignments, tends to refute their descriptions of those remarks. See, e.g., *Esderts v. Chicago, Rock Island & Pacific Co.*, 76 Ill. App. 2d 210 (1966), cert. denied 386 U.S. 993 (1967).

In fact, comparison of the accounts of Dotson, Wagner, and Donald Burke with events occurring prior to the filing of the charge discloses instances where they had tailored facts so that they would correspond to their assertion that they had been treated unjustly. In his above-described May letter, Dotson had claimed that he had been told by Jon Burke that he would "never work another show . . . ." Yet—although he described such remarks as having been made by Jon Burke in July, August, and again in September—Dotson never testified that such a remark had been made to him by Jon Burke prior to preparation of his May letter. In a like vein, Dotson claimed that he had been told by Reed, as set forth above, that Jon Burke had said that Dotson would be assigned to "the next show that goes out . . . ." However, Reed did not confirm having told that to Dotson nor, for that matter, having been told by Jon Burke what Dotson described as having been related to him by Reed. Instead, with reference to Jon Burke's remark in this area, Reed testified, "I think he said he may be able to put them [sic] in September, when business picks up, but right now he can't put Jim on."

Yet another illustrations of the alleged discriminatees' tendency to distort reality to correspond to their own scenario arose in connection with a complaint to the Union in January 1982 by Donald Burke. He complained to Business Agent Reed that a nonseniority person, Ed Hurny or Hurney, had worked 12 to 14 hours for 3 days while Burke, a driver with lot seniority, had been restricted to 8 hours' daily work. Based on that complaint, Reed had filed a grievance with Respondent regarding the matter. However, testified Reed, "when I had a meeting with Jon, I found out that Don worked about twelve hours instead of eight." In short Donald Burke simply had understated the number of hours that he actually had worked in an effort to prevail on his grievance and, testified Reed, "when I checked the record . . . there was no violation."

Nevertheless, despite the Union's discovery of Donald Burke's distortion of the situation and its abandonment of his grievance, Burke perpetuated the charade regarding this incident when he appeared as a witness in this proceeding. For, prior to Reed's appearance as a witness, Donald Burke testified that he had been deprived of more than 8 hours' daily work while Hurny had been permitted to work significant amounts of overtime during those days. Indeed, apparently not satisfied with simply testifying inaccurately that he had been deprived of extra hours on those days, when he testified, Donald Burke added to the story, by claiming that, after he had complained to the Union, Planner Bruce MacLeod had said that he did not realize that Burke had "wanted to put in a lot of hours . . . so I was just, you know, sending Ed Hurney up there to let him go out," but "Now that I know that you want the hours . . . I would let you have the location truck." Of course, inasmuch as Respondent's records disclosed that Donald Burke had not been deprived of "a lot of hours," such a statement by MacLeod makes no sense. In fact, when he testified, MacLeod, did not corroborate Donald Burke's account either of the deprivation of extra hours in favor of Hurny, nor of the apology and explanation that Donald Burke attributed to MacLeod.

The tendency of the alleged discriminatees to recite whatever appeared momentarily advantageous to them when they testified was amply shown when Wagner testified. During cross-examination, he first conceded that he did "[n]ot particularly" like Jon Burke. Then, apparently perceiving that this might not have been an answer particularly advantageous to his own cause, Wagner testified, "Well, I don't really dislike him or like him, to be honest," although he then admitted that "in anger" he "might have said" that he could not stand Jon Burke. Of greater significance, after first testifying that he did not know of anybody that had complained about his work, Wagner then conceded that Jon Burke had written a letter on February 3, 1982, complaining to the Union about Wagner's "gross negligence" in having failed "to safety check his vehicle." In fact, letters of complaint about Wagner's work also had been sent to the Union on February 4 and July 14, 1982. Indeed, so careful to avoid saying anything that might diminish his position was Wagner attempting to be during cross-examination that at one point he denied altogether that his purpose in going to the Union had been to complain about not receiving any production work—a denial from which he quickly was compelled to retreat when reminded of his own earlier testimony to the contrary.

Finally, Bonnie Seltzer was not an alleged discriminatee and, accordingly, had no direct stake in the outcome of this proceeding. However, she is a very close friend of Dotson and during the hearing displayed a keen interest in supporting his position. True, her account of Jon Burke's purported spring 1979 remark pertained to

Donald Burke, not to Dotson. Nevertheless, all three discriminatees appeared to view their interests as having become merged, as best illustrated by their descriptions of a joint conversation with Jon Burke on September 14, and to believe that success in this case by one of them at least enhanced the probability of success by the others as well. Consequently, while Seltzer's testimony did not benefit Dotson directly, she appeared perceptive enough to realize that if it could be established that Jon Burke would have been willing to discriminate against Donald Burke for having complained to the Union, then Dotson's chance of prevailing would be improved as well.

In point of fact, Seltzer's description of Jon Burke's purported instruction to the planner, based assertedly on Donald Burke's grievance about the van Houton group, was vague and unconvincing. She did not specify the month during which it had occurred. She thought, but was not certain, that Jon Burke had made the statement in the early afternoon. She had overheard him speaking to a planner, but was unable to recall the indentity of that individual. She could not remember whether the planner had been a male or a female. She was unable to recall whether or not anyone other than the planner, Jon Burke, and herself had been present. In short, her description of the purported remark by Jon Burke was such that it maximized the aid furnished to Donald Burke's, and thereby Dotson's, cause, but, due to her asserted inability to recall surrounding circumstances, minimized the risk that she would concede anything or make any statement concerning the incident that might injure the discriminatees' cause.

In sum, I do not credit the accounts of Dotson, Wagner, Donald Burke, and Seltzer to the effect that Jon Burke had made statements expressing hostility toward the three alleged discriminatees for having complained to the Union and connecting Respondent's failure to assign them more on production work to those complaints. That conclusion, however, does not end the matter. When there are allegations of discrimination, the crucial factor to be analyzed is the Respondent's state of mind. See, e.g., *Interior Alterations, Inc.*, 264 NLRB 677 (1982), and cases cited therein. Here, it is conceded that Dotson, Wagner, and Donald Burke had been precluded from the normal number of on-production assignments and it is not disputed that each of them had complained to the Union. Consequently, the issue remaining for consideration is whether, based on objective considerations and evidence that is credible, there had been a relationship between those two facts such that it can be concluded, based upon a preponderance of the evidence, that the latter had occasioned the former.

In the case of Dotson, Respondent had commenced precluding him from on-production assignments after having granted his request for removal from "Knots Landing" in March. As discussed above, there is no credible specific evidence that he had lodged any complaints with the Union until 2 months later, in May. Consequently, there hardly is a basis for concluding that Dotson's complaints to the Union had motivated Respondent's decision to preclude him from on production assignments. Of course, Respondent had continued implementing that decision after Dotson had begun complaining about it in May to the Union. However, so far as the record discloses, there had been no change in the manner that it had been implemented after Dotson had initiated his complaints. That is, Respondent simply had continued in the same fashion and, so far as the record discloses, to the same degree after Dotson had commenced complaining to the Union the practice that it had instituted before he had done so. While Reed had been told that Dotson might be restored on production assignments in September, that had been the month during which he had gone on disability. Consequently, there would be no basis, other than sheer speculation, for projecting the work to which he would have been assigned but for that disability.

Aside from complaints to the Union, the record discloses two other possible motives for Respondent's lack on-production assignments to Dotson that, at least arguably, could be advanced as ones unlawful under the Act. The first pertains to Dotson's removal from "S.O.B." in 1980. In her brief, counsel for the General Counsel argues that Dotson had been engaged in protected activity when he had argued with Carter inasmuch as "Dotson's comments to Sammy Carter while working on 'S.O.B.' related to the working conditions of all drivers . . ." This argument is predicated on Dotson's testimony that there had been a sign in the doghouse directing drivers to service their motor homes before punching out. Yet, as found above, Dotson was not a reliable witness. Jon Burke denied that had been a sign. While there was testimony concerning messages on other signs in the doghouse, and though even pictures of other signs were offered as exhibits, not one other witness corroborated Dotson's account of a sign pertaining to motor homes. Nor, independent of whether or not there had been a sign, is there any evidence that Respondent imposes a requirement such as Dotson claims that he had been attempting to observe that day. Thus, there is no reliable evidence to support the predicate from which the General Counsel's argument proceeds.

Even had there been a work rule obliging drivers to service motor homes at the end of shifts, so far as the record discloses, such a rule had not been imposed as a result of collective bargaining. Assuming *arguendo* that it existed, it was one formulated solely by Respondent and nothing in the Act precludes an employer from making exceptions to its own work rules, so long as those exceptions are not motivated by activities protected by the Act. Here, there has been no showing that Carter's direction that Dotson cease work that day had been motivated by any such activities. True, it does appear that Carter had been concerned that if Dotson had continued working, Respondent would have had to pay him a premium rate under the forced pay provision of the collective-bargaining agreement. But, again, nothing in the Act compels employers to allow employees to continue working so that they will be entitled to premium contractual payments. In short, Respondent simply took no action that would have constituted a violation of the Act by directing Dotson to cease work that day. Moreover, there is no basis for assuming that Dotson would have suffered any punishment by Respondent as a result of not

having followed Carter's direction. To the contrary, as his removal from "S.O.B." and his subsequent conversation with Jon Burke disclose, Respondent agreed with the decision made by Carter not to oblige Dotson to service the motor home at the end of his shift that day. Therefore, it canot be concluded that Dotson had been engaging in any protected activity in mid-1980, prior to his initial reduction in on-production assignments.

Dotson's description of the basis for his request for removal from "Knots Landing" suggests another possible unlawful motive for Respondent's subsequent refusal to assign on-production work to him. For, Dotson claimed that the disagreements between the driver-captain and coordinator on that production had generated "safety" concerns that had led to his request. Workplace safety, of course, is a condition of employment and, accordingly, is an objective which employees can seek to promote and improve through activities protected by the Act.[10] Thus, if safety truly had motivated Dotson's removal request and inasmuch as that request and been at least one of the reasons for Respondent's refusal to thereafter assign him to on production work, there would be, at least, some basis for arguing that Respondent had been retaliating against Dotson for having engaged in activity protected by the Act.

Yet, as concluded above with respect to the alleged discriminatees' accounts of statements to them by Jon Burke about having complained to the Union, it appeared that Dotson simply was creating a safety concern in connection with his removal request in a further effort to buttress his chances of success in this proceeding. His efforts to describe the manner in which the purported friction between the driver-captain and coordinator had created safety hazards was vague and unconvincing. His assertion that, in the process of arguing between themselves, the two asserted combatants had been "bringing the drivers into it" was not corroborated either by other witnesses or by any other evidence presented during the hearing. Indeed, even his assertion that friction had existed between the driver-captain and coordinator on "Knots Landing" was not confirmed by other credible evidence. Jon Burke denied that Dotson had said anything about safety when making the request to be removed from that production. Reed—the person to whom it would have been most logical for Dotson to have explained that there had been a safety concern, if one truly had existed, for his removal request—had discussed the matter with both Dotson and Jon Burke in the process of attempting to correct the former's complaint about not receiving production work. But Reed made no mention of Dotson having said anything about safety motivating the request for removal from "Knots Landing." In sum, not only was Dotson not a reliable witness, but there is no other basis for concluding that he had harbored a concern congnizable under the Act that could have been a motivating factor for Respondent's decision to preclude him from on production assignments. Therefore, I shall recommend that the allegation of discrimination against him be dismissed.

[10] See *Alleluia Cushion Co.*, 221 NLRB 999 (1975); but cf. *Enterprise Products*, 264 NLRB 946 (1982).

Jon Burke testified that Respondent had made the decision to cease assigning on-production work to Wagner during 1980. That testimony was confirmed by Wagner who testified that he had begun receiving less than the normal amount of on-production work during 1980. There is no evidence that Wagner had made any complaints to the Union about Respondent prior to the time that he had initially begun receiving a reduced amount of on-production work. Consequently, there is no basis for concluding that complaints to the Union could have motivated that decision.

However, as set forth above, Wagner claimed that the initial reduction in his on-production assignments had been preceded by a controversy with Jon Burke concerning a meal penalty claim, for a dinner meal, arising after Wagner had completed work later than usual due to delivering a script. According to Wagner, Jon Burke had been angry about the claim and had directed Wagner not to file such a claim in the future. However, while he agreed that he had discussed the matter with Wagner, Jon Burke denied that he had been angry about it and, further, denied having told Wagner that he should not have filed the claim. Rather, testified Burke, Wagner had been the only employee that had filed a claim for a dinner meal for that day and, pursuant to normal practice where a meal penalty claim is filed for a dinner meal, Burke had sought to ascertain the reason for Wagner's claim.

Given my impression of the unreliability of Wagner's testimony and in light of his own admitted willingness to "lie" about the charge and to make up conversations, I do not credit Wagner's description of this conversation with Jon Burke. It is worth noting that meal penalties are payments that Respondent is obligated to make under the terms of its collective-bargaining agreement. Not only is there no evidence that Respondent has attempted historically to avoid making such payments, when drivers are entitled to receive them, but Reed testified that he had received relatively few grievances filed against Respondent. Indeed, both Reed and Campbell, who had served as the Union's business agent for approximately 6 months, testified that it was their opinion that Jon Burke was fair with the employees. In light of this evidence, it seems highly unlikely that Jon Burke would have chastized Wagner for having sought a meal penalty payment for a single meal, and, further, that Respondent would have removed Wagner regularly from on production assignments thereafter for that reason.

As set forth above, Wagner claimed that after the "S.O.B." incident, when the Union had been contacted with complaints about confusion at the site of that production and concerning the presence of nonunion drivers there, he had been assigned "[v]ery little" on-production work, "if any." At the outset, it is not altogether clear whether Wagner was claiming that the amount of his on-production work had been even further reduced following this incident or, alternatively, that the amount of that work assigned to him had continued at the same reduced level as earlier in the year. Even, however, if it had been further reduced, a preponderance of the evidence will not support the conclusion that that further reduction

had resulted from activity by Wagner protected by the Act.

While Wagner testified that the Union had been contacted about the situation at the site, he did not claim that he had been the one that had done so. Rather, as set forth above, he testified, "*we* called the Union." (Emphasis supplied.) Other than his question to Carter, "what are we supposed to do," he did not described any action that he had taken, in connection with the Union during that production, that had been unique or different than the actions taken by other members of Respondent's crew. Yet, there is no evidence, nor is there a contention, that all of the drivers in that crew had been discriminated against as a result of their efforts, through the Union, to eliminate the confusion that had existed there. In fact, it is undisputed that once Jon Burke had learned of the presence of extra drivers at the site and that some of them were not union members, not only had he protested to the producer's agent about their presence, but he, personally, had called the Union, saying that "they better get a union representative out there to take care of the situation." Given Jon Burke's attitude toward the situation at that time, and the fact that the employees' communications with the Union sought the same action that Jon Burke was seeking from it—intervention to assist in correcting confusion at the production site—it seems likely that Jon Burke would have become annoyed at Respondent's drivers for having contacted the Union about the problem. Indeed, there was no evidence that Jon Burke even had known that the drivers had contacted the Union nor, for that matter, that Wagner had been involved, if he had, in the drivers' effort to persuade the Union to send a representative to the site.

In fact, when Wagner had been removed from "S.O.B.," he had been told, by Carter, that the reason was for sleeping on the job, conduct in which, as described above, Wagner admits having engaged. Thus, he testified that "it's cold out there at that time of the year down by the beach," and that as Respondent's drivers just had been standing around, doing nothing, "I went to the mini bus and I laid down and I went to sleep." Based on this testimony, the General Counsel argues that, in sleeping on the job, Wagner had been engaging in "symbolic speech," that is, a "silent protest," containing an inherent "pro-union statement," of the presence of the extra crew and its nonunion members. Although there may be an area to which such a theory has applicability under the Act, this is not it.

Wagner did not claim that he had been engaging in a protest by having gone to the minibus to sleep. Rather, he simply had been bored and cold. So he had done what he claimed all drivers in the industry do: "I don't know a driver that doesn't sleep in this business." Accordingly, there is no basis in the record for concluding that, in sleeping on the job, Wagner had been protesting against anything, much less the presence of the extra crew or its nonunion members. From his testimony, he would have done the same thing whether or not there had been an extra crew and whether or not it had consisted of some nonunion members. Moreover, it is difficult to conclude how Respondent would have been aware that Wagner had been engaging in some form of protest about the extra crew with nonunion members or, given Jon Burke's undisputed desire to have that very problem corrected, that it would have sought to retaliate against him for that reason. In sum, there simply is no basis for concluding that a preponderance of the evidence supports the conclusion that Wagner had engaged in protected concerted activities, in connection with "S.O.B.," that led Respondent to reduce his number of on-production assignments. Therefore, I shall recommend that the allegation of discrimination against him be dismissed.

The situation with regard to Donald Burke is somewhat more complex. Jon Burke testified that he had been "pretty annoyed" that Donald Burke had confronted van Houton and did not deny that the Union had complained to Respondent about her and that the others moving materials to Culver City. Moreover, it is undisputed that Donald Burke's on-production assignments had been reduced at some point following his encounter with van Houton. Thus, timing and Jon Burke's annoyance tend to support the existence of a casual relationship between institution of the practice of reducing Donald Burke's on-production assignments and his complaint to and about van Houton.

Yet, the incident involving van Houton occurred in the spring of 1979, approximately 2-1/2 years before the filing of the charge in this matter. Under Section 10(b) of the Act, "no complaint shall issue based upon any unfair labor practices occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made . . . ." Inasmuch as there is no evidence of any variance in the practice of assigning Donald Burke minimal, if any, on production work since that practice had been instituted in 1979, it would appear that during the 10(b) period, Respondent had done no more than continue to implement a practice instituted at a distant time and, thus, that that continued implementation, of itself, is beyond the ability of the Board to find unlawful. *Machinists Local 1424 v. NLRB*, 362 U.S. 411 (1960); see also *NLRB v. MacMillan Ring-Free Oil Co.*, 394 F.2d 26 (9th Cir. 1968).

True, there is no evidence of any admissions, such as those created during 1981 by the alleged discriminatees, by Jon Burke in 1979 connecting the reduction of Donald Burke's on-production time to his confrontation with van Houton. But, by his own admission, Donald Burke had been well aware that his on-production assignments had been reduced starting in 1979 and, obviously, of the fact that the reduction had commenced following his complaint to and about van Houton. In short, the operative facts of a possible violation must have been apparent to Donald Burke and it cannot be said that Respondent had been concealing anything from him. To the contrary, were Seltzer to be credited concerning Jon Burke's purported open annoucement that Donald Burke was no longer to be assigned on-production work because of filing a grievance, the only possible conclusion would be that Jon Burke had been all too willing to reveal his motive for reducing Donald Burke's on-production assignments. Consequently, viewing the matter

from the perspective most favorable to the General Counsel, during the 10(b) period and afterward, Respondent has been doing no more than continuing a practice decided on and instituted well before 1981 even had commenced.

Even, however, were it possible to conclude that each daily assignment during the 10(b) period had constituted a separate and independent unfair labor practice, I would not conclude that a preponderance of the evidence shows that Respondent's assignments to Donald Burke have been motivated by unlawful considerations. At the outset, the above-described opinions of Jon Burke by Reed and Campbell, as well as my own observation of him during the hearing, make it difficult for me to conclude that he would be disposed to harboring a grudge about a single incident over so prolonged a period as that which has elapsed since Donald Burke's encounter with van Houton. While, as noted in footnote 8, *supra*, Donald Burke claimed that he had voiced numerous complaints to the Union prior to June, he gave no specific account of such purported complaints and there is no credible evidence that they were made.

Further, Jon Burke's testimony that he had ceased assigning Donald Burke to on-production work because of complaints about the latter's attitude from, in effect, supervisors on certain productions was corroborated by other witnesses who appeared during the hearing. True, not everybody believes that Donald Burke is an individual with whom it is difficult to work. But, enough people feel that way, and have complained about Donald Burke, that it cannot be said that there had been no basis for Jon Burke's conclusion that Donald Burke created problems when working on production and for Jon Burke's decision to keep Donald Burke away from on-production assignments, where work schedules are determined by production companies' needs, and to keep him working out of the office, where, by virtue of the fact that Respondent, itself, assigns work each day, Respondent would be able to keep, at least, a closer eye on Donald Burke and his handling of assignments.

Indeed, there were times when he testified that Donald Burke's attitude, and the manner in which he answered questions put to him, tended to demonstrate the very characteristics about which Respondent was complaining. When he disagreed concerning certain matters raised during questioning, Donald Burke expressed that disagreement pugnaciously—not simply firmly, but pugnaciously. I have no doubt that he reacted similarly, probably even in a more quarrelsome manner, when told to do something, or to do something in a manner, with which he disagreed. That this was so is shown by one further item. Donald Burke was called as a rebuttal witness, after Jon Burke had described a conversation between the two of them during which Jon Burke "had refreshed [Donald Burke's] memory about past problems that we had had and why he was assigned to the construction department. And I told him at that time that the problem still existed with his personality problem and that if it didn't change, I was not going to put him back onto production." When testifying during rebuttal, Donald Burke neither denied that his conversation had occurred, nor did he dispute Jon Burke's account of what had been said during it. In view of the totality of the circumstances, I do not conclude that Respondent has been precluding Donald Burke from receiving on production assignments because of considerations prohibited by the Act. Therefore, I shall recommend that the allegation of discrimination against Donald Burke be dismissed.

One final aspect remains for consideration. With the exception of Dotson, whose employment ended in September with his disability, from May until commencement of this hearing, the alleged discriminatees repetitively have complained to the Union about Respondent and have contiunued to be precluded, by and large, from performing on production work. Nevertheless, there is no basis for concluding that Respondent has continued refusing to assign them that work because of their by now recurrent complaints. To the contrary, so far as the record discloses, Respondent simply has continued implementing its by now longstanding practice with respect to the types of work assigned to them in the same manner as always. There is no evidence that there has been any variance since the summer of 1981.

With respect to Wagner, as set forth above, Respondent's principal complaint has been that he all to often accepts calls for assignments on the following day and then, early during the morning when he is supposed to report as promised, telephones, to say that he will be unable to report, thereby obliging Respondent to locate and dispatch replacements, hopefully in time for the work to be completed as scheduled. "Even where an employee may report the reasons for continued absence[s], or may have what appear to be justifiable excuses for such absences, an employer may well decide that an absence-prone employee is of no value to his business." *Maryland Cup Corp.*, 178 NLRB 389, 390 (1969). Especially would this be the case concerning employees working on production. For, as noted above, employees working on shows must observe the work schedules for those productions. Those schedules frequently require earlier starting times than Respondent imposes for off-production personnel. Thus, when Wagner calls on mornings that he is scheduled to work on production, to report that he will be absent, it means that Respondent likely would have even less opportunity to secure a replacement in a timely fashion than if Wagner had been assigned off-production work.

During the hearing, Respondent produced evidence that Wagner had continued this practice in late 1981 and 1982. Though called as a rebuttal witness, Wagner never contradicted that evidence. In short, even after having commenced his complaints to the Union, Wagner had continued engaging in the very conduct about which Respondent has been complaining. Consequently, notwithstanding Wagner's complaints to the Union, it is not surprising that Respondent has chosen to continue keeping him off production. Certainly, it cannot be said that by continuing to engage in this conduct, Wagner has given Respondent any basis for reconsidering its decision and changing its procedure with regard to the work assigned to him.

Similarly, no evidence was produced that would provide any basis for Respondent to conclude that Donald Burke would be more tractable if again assigned to on-production work. Indeed, at the hearing, Burke displayed no flexibility in explaining why he had taken some of the actions about which complaints to Respondent had been made by site supervisors. To the contrary, he continued to maintain that he had performed correctly, in the process blaming everyone else but himself for incidents about which his conduct had been faulted.

In sum, that the alleged discriminatees may have been proficient or "good" workers insofar as their abilities or skills are concerned is not the issue in this case. In the case of Wagner, what is at issue in his continued failure to meet commitments that he makes to report on the following day. In the case of Donald Burke, what is at issue is his willingness to accept work and perform it in the manner expected of him by his superiors. What turns out not to be at issue, after having observed the witness and after having reviewed the record, is complaints made to the Union by the three alleged discriminatees, as well as the minimal other protected concerted activities in which they may have engaged. For a preponderance of the evidence simply fails to support the allegations that the activity influenced Respondent's decisions to remove and to keep the three of them away from on production assignments.

CONCLUSIONS OF LAW

1. Lorimar Productions, Inc., is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 399, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. Lorimar Productions, Inc., has not violated the Act in any manner alleged in the complaint.

Based upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[11]

It is hereby ordered that the complaint be, and it hereby is dismissed in its entirety.

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.